

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LEONARD McCENZIE,
Plaintiff,

vs.

SERGEANT M. McCLATCHIE,
CORRECTIONS OFFICER ANDREW DUPRAT,
CORRECTIONS OFFICER NEIL GUERIN,
CORRECTIONS OFFICER B. BOGETT,
CORRECTIONS OFFICER R. STEVENS, and
CORRECTIONS OFFICER B. DRAYSE,

Defendants.

**DECISION
and
ORDER**

05-CV-618A(F)

APPEARANCES:

LEONARD McCENZIE, *PRO SE*
00-A-2980
Five Points Correctional Facility
State Rte. 96
P.O. Box 119
Romulus, New York 14541

ANDREW M. CUOMO
ATTORNEY GENERAL, STATE OF NEW YORK
Attorney for the Defendants
ANN C. WILLIAMS
Assistant Attorney General, of Counsel
107 Delaware Avenue
Fourth Floor
Buffalo, New York 14202

In this civil rights action alleging Eighth Amendment violations, Plaintiff moves, by papers filed October 3, 2007 to compel discovery (Doc. No. 53) ("Plaintiff's motion"). On November 13, 2007, Defendants filed the Declaration of Ann C. Williams, Assistant New York State Attorney General, in opposition (Doc. No. 58) ("Williams Declaration"). Plaintiff's reply papers were filed November 21, 2007 (Doc. No. 59).

Specifically, Plaintiff maintains that Defendants failed to comply with the prior order of the court, entered October 11, 2006, ("the October 11, 2006 order"), which directed Defendants to provide Plaintiff with copies of photographs, relating to an investigation of Defendants' alleged assault on Plaintiff, that Plaintiff had demanded during discovery and which, *inter alia*, were the subject of Plaintiff's prior motion to compel (Doc. No. 40). In Plaintiff's reply, Plaintiff reiterates Defendants' failure to comply with the October 11, 2006 order and repeats Plaintiff's assertion of bias against the undersigned and that Plaintiff's motion for recusal (Doc. No. 55) should be granted.¹

Although in the Williams Declaration, Defendants proffer reasons why Plaintiff's motion for recusal should be denied, the declaration does not respond directly to Plaintiff's assertion that Defendants failed to either provide copies of the photographs or an affidavit explaining why such photos do not exist as directed by the October 11, 2006 order. Moreover, nothing in Plaintiff's reply indicates Defendants have, since Plaintiff's motion was filed, acted to provide the information as directed by the court over one year ago. Accordingly, the court finds Plaintiff's contention, that Defendants are in violation of the October 11, 2006 order, is undisputed. Plaintiff's motion will therefore be GRANTED, and Defendants shall show cause, in writing, within 10 days why sanctions available under Fed.R.Civ.P. 37(b)(1) should not be imposed. Plaintiff's reply shall be filed within 10 days after service of Defendants' response. Oral argument on this order to show cause shall be at the court's discretion.

¹ Plaintiff's motion for recusal is addressed in a Decision and Order filed contemporaneously with this Decision and Order.

CONCLUSION

Based on the foregoing, Plaintiff's motion (Doc. No. 53) is GRANTED;
Defendants' shall show cause why sanctions should not be imposed as set forth above.
SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: January 10, 2008
Buffalo, New York